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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

August 11, 2011

Re: Notice of *Ex Parte* Presentation, WT Docket No. 11-65
REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch,

This letter is to advise you that on August 9, 2011, Matt Wood, Derek Turner, Chris Riley, and Joel Kelsey of Free Press met with Rick Kaplan, Susan Singer, Melissa Tye, Patrick DeGraba, and Paul Murray of the Wireless Telecommunications Bureau; Neil Dellar and Joel Rabinovitz of the Office of General Counsel; and Paul de Sa and Paul Lafontaine of the Office of Strategic Planning and Policy Analysis. The purpose of the meeting was to rebut new arguments and analysis recently filed by AT&T in support of its proposed acquisition of T-Mobile, USA. The presentation by Free Press was based on a confidential slide deck, redacted in its entirety from this public filing. Both paper and electronic unredacted highly confidential copies of the slides are being delivered today to the Commission, pursuant to the terms of the protective orders in the above-referenced proceeding.

The arguments raised by Free Press address directly the arguments raised by AT&T in its meetings with the Commission on August 3 and August 4, 2011. In an August 3rd meeting, representatives of AT&T argued to the Commission that the proposed transaction would achieve network efficiencies resulting in reduced relative marginal costs for capacity increases, based on a new engineering analysis. In an August 4th meeting, AT&T asserted that the company had determined not to expand LTE coverage from AT&T's target threshold of 80 percent to 97 percent on the grounds that there was "no viable business case" to do so, even though the company had already made the determination (as made public in AT&T's June 10th *Opposition* in this docket) to expand its HSPA+ service to 97% of the U.S. population by the end of 2012.

In our presentation on August 9th – consistent with previous arguments made in prior filings in this proceeding, and based on numerous citations to confidential and highly confidential material – Free Press explained in detail our position that AT&T is eminently capable of expanding LTE to 97% of the country without the proposed transaction, and that competitive concerns would have driven it to achieve this level of deployment. Any and all arguments that the proposed transaction is necessary for rural buildout, including but not limited to the arguments raised by AT&T in the company's August 4th meeting, must be set aside as not merger-specific for purpose of the Commission's analysis.

Furthermore, whatever the ultimate result of its LTE buildout may be, AT&T's August 4th notice of *ex parte* falsely implies that this merger is necessary to achieve the "national priorities" of delivering "ubiquitous and affordable broadband services to rural America." AT&T's HSPA+ deployment to 97% of the population, coupled with Verizon's public commitment to deploy its own LTE network to at least this same percentage of the population, make it abundantly clear that "broadband" will be just as much available in the absence of this merger.

Thus, even setting aside any possible ulterior motives behind AT&T's business decisions concerning the expansion of its LTE buildout, the Commission must not confuse AT&T's business decisions with what best serves the public interest; after all, this is the same company that once made a business decision that the network that became the Internet was not worth operating.¹

Free Press also reiterated and expanded upon its arguments from previous filings showing that the alleged spectrum efficiency benefits of the merger are either not real or not merger-specific. The Commission must consider the realistic "but for" world that would result if the proposed transaction is not granted, including the potential for AT&T to significantly invest in and upgrade its network in response to competitive pressure. Relying on substantial record evidence, Free Press explained its position that the "but for" world is likely to be far more beneficial to the public and to competition than a post-merger world. Free Press also presented its own analysis of the recent engineering analysis submitted by AT&T, and articulated many problems with that model, as detailed fully in the highly confidential attachment.

Sincerely,

/s/ Chris Riley

Chris Riley, Policy Counsel
Free Press, Washington Office
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CC via email: Rick Kaplan, Susan Singer, Melissa Tye, Patrick DeGraba, Paul Murray, Neil Dellar, Joel Rabinovitz, Paul de Sa, Paul Lafontaine

¹ See, e.g., "ARPANET 1970s," *Cybertelecom Federal Internet Law & Policy*, at http://www.cybertelecom.org/notes/internet_history70s.htm#att (last viewed Aug. 11, 2011). (quoting XEROX PARC engineer Robert Taylor as saying, "When I asked AT&T to participate in the ARPANet, they assured me that packet switching wouldn't work. So that didn't go very far."; and quoting Larry Roberts of ARPA as saying "I went to AT&T and I made an official offer to them to buy the network from us and take it over. We'd give it to them basically.... [A]nd they said it was incompatible with their network. They couldn't possibly consider it. It was not something they could use. Or sell.").

**HIGHLY
CONFIDENTIAL
ATTACHMENT
OMITTED**